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Re: U.S. Patent Application of Invacare
Inventor: Fought
Application No: 10/044,826
Date Filed: October 19, 2001
For: Wheelchair Suspension Having Pivotal Motor Mount
Docket No. 12873/04233



Please acknowledge receipt of the following:

- Return receipt postcard
- Request under 37 CFR 1.8(b) (3 pgs.)
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- Copy of Request under 37 CFR 1.8(b) mailed January 15, 2004 (2 pgs.)
- Copy of Auto-Reply Facsimile Transmission of October 29, 2003 (1 pg.)
- Copy of transmitted correspondence of October 29, 2003 (13 pgs.)

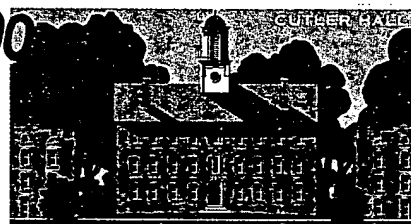
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N. PEJIC

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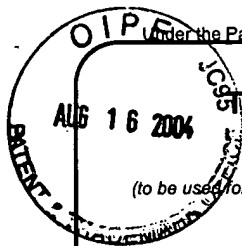
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3611

PTO/SB/21 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	10/044,826
Filing Date	Oct. 19, 2001
First Named Inventor	Fought
Art Unit	3611
Examiner Name	A.M.M. Boehler
Attorney Docket Number	12873/04233

Total Number of Pages in This Submission

22

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ENCLOSURES (Check all that apply)

- | | | |
|---|--|---|
| <input type="checkbox"/> Fee Transmittal Form
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<input type="checkbox"/> Affidavits/declaration(s)
<input type="checkbox"/> Extension of Time Request
<input type="checkbox"/> Express Abandonment Request
<input type="checkbox"/> Information Disclosure Statement
<input type="checkbox"/> Certified Copy of Priority Document(s)
<input type="checkbox"/> Response to Missing Parts/Incomplete Application
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)
<input type="checkbox"/> Licensing-related Papers
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<input type="checkbox"/> Proprietary Information
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<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
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Remarks

**Request under 37 CFR 1.8(b) to Consider Reply to Office Action to be Timely Filed
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Typed or printed name	Joyce Ford
Signature	Date 8-12-04

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

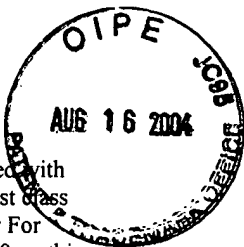
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Fought

Examiner: A. M. M. Boehler

Serial No.: 10/044,826

Art Unit: 3611

Filed: October 19, 2001

Confirmation No. 8055

Attorney Docket No.: 12873/04233

For: **Wheelchair Suspension Having Pivotal Motor Mount**

Mail Stop Petition
Commissioner for Patents
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**REQUEST UNDER 37 CFR 1.8(b) TO CONSIDER REPLY TO OFFICE ACTION TO BE
TIMELY FILED**

The Office held the above-identified application abandoned for failure to timely file a reply to the Office Action mailed on April 29, 2003. Applicant submits that a reply was transmitted in accordance with 37 CFR 1.8(a) and requests the Office to consider the reply as timely filed as all requirements of 37 CFR 1.8(b) have been met previously or herein.

1. Applicant informed the Office of the previous transmission of the correspondence promptly after becoming aware that the Office had no evidence of receipt of the correspondence. On November 18, 2003, Examiner Boehler issued a notice of abandonment indicating that no reply to the April 29, 2003 Office Action was received. On November 24, 2003, Attorney Pejic discussed the notice of abandonment with Examiner Boehler during a telephone conference. Attorney Pejic indicated that a response to the Office Action was faxed to the United States Patent and Trademark Office on October 29, 2003 and that an Auto-Reply Facsimile

Transmission confirmed the United States Patent and Trademark Office's receipt of the response. Examiner Boehler indicated that she would conduct a search for the missing response. On December 2, 2003, Examiner Boehler indicated to Attorney Pejic during a telephone conference that she was unable to locate the October 29, 2003 response.

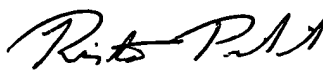
2. On January 15, 2004, Applicant sent a request under 37 CFR 1.8(b) to consider reply to the office action to be timely filed. The request included a copy of the previous transmitted correspondence of October 29, 2003. In addition, the Applicant attested that a proper reply to the April 29, 2003 Office Action was transmitted to the Office on October 29, 2003. As evidence of this transmittal, Applicant included a copy of the Auto-Reply Facsimile Transmission from the United States Patent and Trademark Office indicating that 13 pages were received on October 29, 2003. A receipt postcard, stamped by the USPTO and dated January 20, 2004, was received by Applicant on January 26, 2004.
3. On August 6, 2004, Applicant became aware that the January 15, 2004 request under 37 CFR 1.8(b) to consider reply to the office action to be timely filed, although received by the USPTO, does not appear in the application file. An online search using the United States Patent and Trademark Office's Patent Application Information Retrieval database indicated that the application status remained "Abandoned -- Failure to Respond to an Office Action."
4. On August 10, 2004, Agent Pribisich discussed the status of the application with Examiner Boehler during a telephone conference. It was confirmed that the status of the application was "Abandoned -- Failure to Respond to an Office Action."
5. Applicant again attests that a proper reply to the April 29, 2003 Office Action was transmitted to the Office on October 29, 2003. As evidence of this transmittal, Applicant has included a copy of the Auto-Reply Facsimile Transmission from the United States Patent and Trademark Office indicating that 13 pages were received on October 29, 2003.
6. Applicant attests that a request under 37 CFR 1.8(b) to consider reply to the office action to be timely filed was sent to the Office on January 15, 2004. As evidence of this mailing, Applicant has included a copy of the front and back of the stamped and returned receipt postcard.

7. Applicant has included with this request a copy of the October 29, 2003 transmitted correspondence, as well as the January 15, 2004 mailed correspondence.

Applicant does not believe any fee is associated with a request under 37 CFR 1.8(b). If this is not the case, the Patent Office is hereby authorized to charge any related fee to Deposit Account No. 03-0172. If there are any questions regarding this Petition, please telephone the undersigned.

Respectfully submitted,

Date: AUG. 12, 2004

By: 
Risto Pribisich (Reg. No. 55, 859)
Calfee, Halter & Griswold LLP
800 Superior Avenue
Cleveland, Ohio 44114-2688
(216) 622-8870



Deposited with the United States Postal Service with sufficient postage via U.S. First Class mail in an envelope addressed to Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450, this 15th day of January, 2004.

Re: U.S. Patent Application of Invacare
Inventor: Fought
Application No: 10/044,826
Date Filed: October 19, 2001
For: Wheelchair Suspension Having Pivotal Motor Mount
Docket No. 12873/04233

Please acknowledge receipt of the following:

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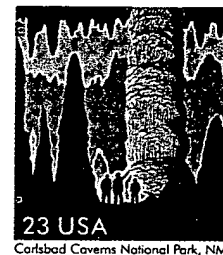
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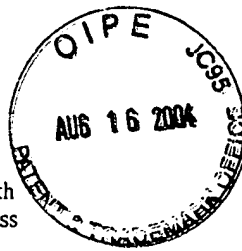
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Signed: Jennifer L. Tucker
Print: Jennifer L. Tucker

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Fought Examiner: A. M. M. Boehler

Serial No.: 10/044,826 Art Unit: 3611

Filed: October 19, 2001 Confirmation No. 8055

Attorney Docket No.: 12873/04233

For: **Wheelchair Suspension Having Pivotal Motor Mount**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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**REQUEST UNDER 37 CFR 1.8(b) TO CONSIDER REPLY TO OFFICE ACTION TO BE
TIMELY FILED**

The Office held the above-identified application abandoned for failure to timely file a reply to the Office Action mailed on April 29, 2003. Applicant submits that a reply was transmitted in accordance with 37 CFR 1.8(a) and requests the Office to consider the reply as timely filed as all requirements of 37 CFR 1.8(b) have been met previously or herein.

1. Applicant informed the Office of the previous transmission of the correspondence promptly after becoming aware that the Office had no evidence of receipt of the correspondence. On November 18, 2003, Examiner Boehler issued a notice of abandonment indicating that no reply to the April 29, 2003 Office Action was received. On November 24, 2003, Attorney Pejic discussed the notice of abandonment with Examiner Boehler during a telephone conference. Attorney Pejic indicated that a response to the Office Action was faxed to the United States Patent and Trademark Office on October 29, 2003 and that an Auto-Reply Facsimile Transmission confirmed the United States Patent and Trademark Office's receipt of the

response. Examiner Boehler indicated that she would conduct a search for the missing response. On December 2, 2003, Examiner Boehler indicated to Attorney Pejic during a telephone conference that she was unable to locate the October 29 response.

2. Applicant has included with this request a copy of the previously transmitted correspondence.
3. Applicant attests that a proper reply to the April 29, 2003 Office Action was transmitted to the Office on October 29, 2003. As evidence of this transmittal, Applicant has included a copy of the Auto-Reply Facsimile Transmission from the United States Patent and Trademark Office indicating that 13 pages were received on October 29, 2003.

Applicant does not believe any fee is associated with a request under 37 CFR 1.8(b). If this is not the case, the Patent Office is hereby authorized to charge any related fee to Deposit Account No. 03-0172. If there are any questions regarding this Petition, please telephone the undersigned.

Respectfully submitted,

Date: Jan 15, 2004

By: MRHull
Mark R. Hull (Reg. No. 54, 753)
Calfee, Halter & Griswold LLP
800 Superior Avenue
Cleveland, Ohio 44114-2688
(216) 622-8419



Auto-Reply Facsimile Transmission



UNITED STATES
PATENT AND
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TO: Fax Sender at 2162410816

Fax Information

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Total Pages:

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OCT. 29. 2003 3:35PM CALFEE HALTER GRISWOLD		10:045 P.	
CH & G		CALFEE, HALTER & GRISWOLD LLP	
		October 29, 2003	
TO: Ex. A. M. M. Boehler FAX NUMBER: 1-703-872-9325 SEND ONLY TO THE ABOVE FAX NUMBER:		CONFIRMATION PHONE NUMBER: 1-703-308-0422	
FROM: Nenad Pejic DIRECT DIAL PHONE NUMBER: 216-622-8835			
CLIENT NO.: 12873	MATTER NO.: 04233	CLIENT NAME: Invacare	
NUMBER OF PAGES (including this page): 13			
MESSAGE:			
In re application of: Fought		Examiner: A. M. M. Boehler	
Serial No.: 10/044,826		Art Unit: 3611	
Filed: October 19, 2001		Conf. No. 8055	
Docket No.: 12873/04233			
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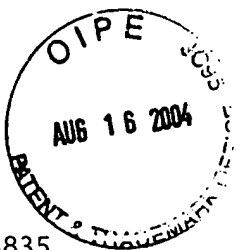
T.L.B. IP. Dept.



CALFEE, HALTER & GRISWOLD LLP

October 29, 2003

TO: Ex. A. M. M. Boehler
FAX NUMBER: 1-703-872-9325
SEND ONLY TO THE ABOVE FAX NUMBER:



CONFIRMATION
PHONE NUMBER: 1-703-308-0422

FROM: Nenad Pejic
DIRECT DIAL PHONE NUMBER: 216-622-8835

CLIENT NO.: 12873

MATTER NO.: 04233

CLIENT NAME: Invacare

NUMBER OF PAGES (including this page): 13

MESSAGE:

In re: application of: Fought

Examiner: A. M. M. Boehler

Serial No.: 10/044,826

Art Unit: 3611

Filed: October 19, 2001

Conf. No. 8055

Docket No.: 12873/04233

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Fax Operator's Initials:

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Time: 3:37

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Time: 3:42

1400 McDonald Investment Center • 800 Superior Avenue • Cleveland, Ohio 44114-2688 • 216/622-8200

Cleveland Fax Number • 216/241-0816

1100 Fifth Third Center • 21 East State Street • Columbus, Ohio 43215-4243 • 614/621-1500

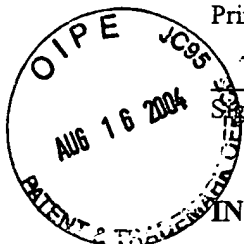
Columbus Fax Number • 614/621-0010

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I hereby certify that this communication is being sent via facsimile to
703-872-9325 this 29th day of October 2003.

Nenad Pejic

Print Name



Signed

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Fought

Examiner: A. M. M. Boehler

Serial No.: 10/044,826

Art Unit: 3611

Filed: October 19, 2001

Conf. No. 8055

Docket No.: 12873/04233

For: **Wheelchair Suspension having Pivotal Motor Mount**

PETITION AND FEE FOR EXTENSION OF TIME (37 CFR 1.136(a))

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

1. This is a petition for an extension of the time to respond to the Office Action mailed on April 29, 2003 for a period of three months.
2. Extension period and fee:

(months)

Fee for
Large Entity

<input type="checkbox"/>	one month	\$ 110.00
<input type="checkbox"/>	two months	\$ 420.00
<input checked="" type="checkbox"/>	three months	\$ 950.00
<input type="checkbox"/>	four months	\$ 1480.00
<input type="checkbox"/>	five months	\$ 2010.00

Fee: \$ 950.00

3. An amendment/Missing Parts is filed ☒ herewith ☐ has been filed _____.

4. Fee Payment

Charge Deposit Account No. 03-0172 for the above fee and for any additional extension fee required or credit for any excess fee paid. A duplicate copy of this sheet is enclosed.

By:

Nenad Pejic
Nenad Pejic (Reg. No. 37,415)
(216) 622-8835

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CERTIFICATE OF FACSIMILE

Thereby certify that this communication is being sent via facsimile to
703-872-9325 this 29th day of October 2003.

Nenad Pejic

Print Name

Nenad Pejic

Signed

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	:	Examiner: A. M. M. Boehler
	:	
Fought	:	
	:	
Serial No.: 10/044,826	:	Art Unit: 3611
	:	
Filed: October 19, 2001	:	Docket No.: 12873/04233
	:	
For: Wheelchair Suspension having	:	Confirmation No. 8055
Pivotal Motor Mount	:	

AMENDMENT

Commissioner For Patents
Mail Stop Amendment
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Dear Sir:

A three-month extension of time accompanies this response. In response to the Office
Action of April 29, 2003, kindly amend the application as follows:

Listing of Claims including original and new claims begin on page 2.

Remarks begin on page 6.

LISTING OF CLAIMS:

1. (canceled) A wheelchair suspension comprising:
a frame member;
a pivoting assembly having:
a pivot arm pivotally coupled to the frame and having a first engagement surface;
a drive assembly pivotally coupled to the frame and having a second engagement surface
configured to engage the first engagement surface; and
wherein the second engagement surface is configured to disengage from the first engagement
surface upon pivotal movement of the drive assembly in a first direction.
2. (currently amended) The suspension of claim [1] § wherein the first engagement surface
comprises a shoulder.
3. (currently amended) The suspension of claim [1] § wherein the second engagement
surface comprises a cylindrical shape.
4. (currently amended) The suspension of claim [1] § wherein the first engagement surface
comprises an undulating surface.
5. (currently amended) The suspension of claim 3 wherein the cylindrical shape is
received by the undulating surface.
6. (currently amended) The suspension of claim [1] § wherein the pivot arm and the drive
assembly are pivotally coupled to the frame at a common location on the frame.
7. (currently amended) The suspension of claim [1] § further comprising a resilient
member for regulating the second engagement surface disengage from the first engagement
surface.
8. (currently amended) [The suspension of claim 1] A wheelchair suspension comprising:
a frame;

a pivoting assembly having:

a pivot arm pivotally coupled to the frame and having a first engagement surface;

a drive assembly pivotally coupled to the frame and having a second engagement surface configured to engage the first engagement surface; and

wherein the second engagement surface is configured to disengage from the first engagement surface upon pivotal movement of the drive assembly in a first direction, wherein the pivot arm further comprises [a] first and second ends and wherein the first end has a castor assembly coupled thereto and wherein the second end comprises the first engagement surface.

9. (currently amended) The suspension of claim 6 wherein the pivot arm further comprises a first and second ends and wherein the first end has a castor assembly coupled thereto and wherein the second end comprises the first engagement surface, and wherein the common pivot location is between the first and second ends.

10. (canceled) A wheelchair suspension comprising:

a frame;

at least one pivot arm pivotally coupled to the frame and having a first engagement surface;

at least one drive assembly pivotally coupled to the frame and having a second engagement surface;

wherein the pivot arm and drive assembly are pivotally coupled to the frame at a common location on the frame; and

wherein the first and second engagement surfaces are configured to engage each other upon pivotal motion of the drive assembly in a first direction and to disengage from each other upon pivotal motion of the drive assembly in a second direction.

11. (currently amended) The suspension of claim [10] 15 wherein the first engagement surface comprises a shoulder.

12. (currently amended) The suspension of claim [10] 15 wherein the second engagement surface comprises a cylindrical shape.

13. (currently amended) The suspension of claim [10] 15 wherein the first engagement surface comprises an undulating surface.

14. (currently amended) The suspension of claim [10] 15 further comprising a resilient member disposed between the pivot arm and the drive assembly to limit the relative pivotal movement therebetween.

15. (currently amended) [The suspension of claim 10] A wheelchair suspension comprising:
a frame;
at least one pivot arm pivotally coupled to the frame and having a first engagement
surface;
at least one drive assembly pivotally coupled to the frame and having a second
engagement surface;
wherein the pivot arm and drive assembly are pivotally coupled to the frame at a common
location on the frame; and
wherein the first and second engagement surfaces are configured to engage each other
upon pivotal motion of the drive assembly in a first direction and to disengage from each other
upon pivotal motion of the drive assembly in a second direction, and wherein the pivot arm
comprises a front portion having [a] at least one caster coupled thereto and a rear portion having the first engagement surface.

16. (original) The suspension of claim 15 wherein the pivotal coupling of the pivot arm is between the front and rear portions of the pivot arm.

17. (currently amended) The suspension of claim [10] 15 wherein pivotal motion of the drive assembly in a first direction causes pivotal motion of the pivot arm and pivotal motion of the drive assembly in a second direction does not cause pivotal motion of the pivot arm.

18. (currently amended) A wheelchair suspension comprising:
a frame having first and second sides;

first and second pivoting assemblies coupled to the first and second sides of the frame, each pivoting assembly comprising:

a pivot arm pivotally coupled to the frame and having a first engagement surface;

a drive assembly pivotally coupled to the frame and having a second engagement surface configured to engage the first engagement surface; and

wherein the second engagement surface is configured to disengage from the first engagement surface upon pivotal movement of the drive assembly in a first direction, and wherein the pivot arm comprises a front portion having [a] at least one caster coupled thereto and a rear portion having the first engagement surface.

19. (original) The suspension of claim 18 wherein the first engagement surface comprises at least a partially undulating surface.

20. (original) The suspension of claim 19 wherein the second engagement surface comprises a shape configured to be at least partially seated within the at least partially undulating surface.

Remarks

Reconsideration of the present patent application is requested. In this regard, all of the claims, except for claims 8, 9, 15 and 16, stand rejected based on prior art. Claims 8, 9, 15 and 16 stand objected to as being dependent upon rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims. Claims 8 and 15 have been rewritten so as to be in independent form and claim 18 has been amended to incorporate the cited allowable subject matter. Also, the claims have been amended where necessary to overcome the rejections under 35 U.S.C. § 112.

Additionally, Applicant filed on January 29, 2002 an Information Disclosure Statement and form PTO-1449 (4 pages) disclosing 52 references. A copy of the return receipt postcard is attached for reference along with the PTO 1449 pages disclosing the cited references. Applicant's respectfully request confirmation that such Information Disclosure Statement and references have indeed been considered by the Examiner.

CONCLUSION

Based on the foregoing amendments and remarks, the Applicant believes that all of the claims in this case are now in a condition for allowance and an indication to that effect is earnestly solicited. Furthermore, if the Examiner believes that additional discussions or information might advance the prosecution of this case, the Examiner should feel free to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



Nenad Pejic (Reg. No. 37,415)
Calfee, Halter & Griswold, LLP
Customer No. 24024
Phone: (216) 622-8835
Fax: (216) 241-0816



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Inventor(s): Fought
For: **WHEELCHAIR SUSPENSION HAVING PIVOTAL MOTOR MOUNT**
CH&G Ref.: 12873/04233 (NP:jkb)

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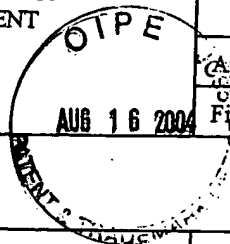
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Applicant: Fought

Filing Date: October 19, 2001

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U.S. PATENT DOCUMENTS

Initial*		Document No.	Date	Name	Class	Subcl.	Filing Date
	AA	3,573,877	Apr. 6, 1971	Locke			
	AB	3,602,522	Aug. 31, 1971	Zamotin			
	AC	3,661,228	May 9, 1972	Glasser			
	AD	3,664,450	May 23, 1972	Udden et al.			
	AE	3,848,883	Nov. 19, 1974	Breacain			
	AF	3,976,152	Aug. 24, 1976	Bell			
	AG	4,119,163	Oct. 10, 1978	Ball			
	AH	4,128,137	Dec. 5, 1978	Booth			
	AI	4,222,449	Sep. 16, 1980	Feliz			
	AJ	4,264,085	Apr. 28, 1981	Volin			
	AK	4,310,167	Jan. 12, 1982	McLaurin			
	AL	4,375,295	Mar. 1, 1983	Volin			
	AM	4,455,029	Jun. 19, 1984	Taylor			
	AN	4,483,407	Nov. 20, 1984	Iwamoto et al.			
	AO	4,513,832	Apr. 30, 1985	Engman			
	AP	4,545,593	Oct. 8, 1985	Farnam			

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	AQ	JP410248877A	Sep. 22, 1998	Japan			
	AR	WO 90/06097	June 14, 1990	Europe			

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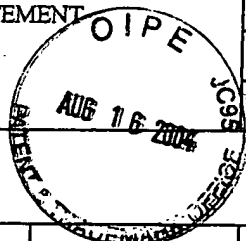
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	AA	4,618,155	Oct. 21, 1986	Jayne			
	AB	4,687,068	Aug. 18, 1987	Pagett			
	AC	4,805,712	Feb. 21, 1989	Singleton			
	AD	4,823,900	Apr. 25, 1989	Farnam			
	AE	4,926,952	May 22, 1990	Farnam			
	AF	4,962,942	Oct. 16, 1990	Barnett et al.			
	AG	5,123,495	Jun. 23, 1992	Littlejohn et al.			
	AH	5,180,275	Jan. 19, 1993	Czech et al.			
	AI	5,228,709	Jul. 20, 1993	Kao			
	AJ	5,230,522	Jul. 27, 1993	Gehlsen et al.			
	AK	5,248,007	Sep. 28, 1993	Watkins et al.			
	AL	5,341,533	Aug. 30, 1994	Seitz			
	AM	5,372,211	Dec. 13, 1994	Wilcox et al.			
	AN	5,447,317	Sep. 5, 1995	Gehlsen et al.			
	AO	5,518,081	May 21, 1996	Thibodeau			
	AP	5,562,172	Oct. 8, 1996	Mick			

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U.S. PATENT DOCUMENTS

Initial*		Document No.	Date	Name	Class	Subcl.	Filing Date
	AA	Des. 397,645	Sep. 1, 1998	Schaffner			
	AB	5,833,248	Nov. 10, 1998	Eguchi			
	AC	5,851,019	Dec. 22, 1998	Gill et al.			
	AD	5,853,059	Dec. 29, 1998	Goertzen et al.			
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	AF	5,904,214	May 18, 1999	Lin			
	AG	5,944,131	Aug. 31, 1999	Schaffner et al.			
	AH	5,964,473	Oct. 12, 1999	Degonda et al.			
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	AJ	6,070,898	Jun. 6, 2000	Dickie et al.			
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	AL	6,131,679	Oct. 17, 2000	Pulver et al.			
	AM	6,176,335	Jan. 23, 2001	Schaffner et al.			
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	AO	6,199,647	Mar. 13, 2001	Schaffner et al.			
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U.S. PATENT DOCUMENTS

Initial*		Document No.	Date	Name	Class	Subcl.	Filing Date
	AA	6,234,507	May 22, 2001	Dickie et al.			
	AB	6,312,000	Nov. 6, 2001	Pauls et al.			
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